Filed 8/3/16 In re Carlos R. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In the Matter of CARLOS R., A Person Coming Under the Juvenile Court Law. _____ CARLOS R., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B269414 (Los Angeles County Super. Ct. No. DK10896)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Stephen Marpet, Juvenile Court Referee. Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Marlene Furth, Jody Marksamer and Joseph Escobosa, for Petitioner.

No appearance for Respondent.

Office of County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Real Party in Interest.

Carlos R. (father) has filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452) challenging an order of the juvenile court terminating reunification services with his son, Carlos R.-C. (Carlos), and setting a hearing pursuant to Welfare and Institutions Code section 366.26.[1] We deny the petition.

FACTS AND PROCEDURAL HISTORY

Carlos was born in April 2015, to C. C. (mother), at which time both mother and Carlos tested positive for methamphetamine. Mother admitted having used methamphetamine two days before the baby's birth, after arguing with father.

A Los Angeles County Department of Children and Family Services (DCFS) social worker interviewed father at the hospital. Father acknowledged he had used cocaine and marijuana in the past (most recently in December 2014), and admitted having used methamphetamine the previous week while playing cards with friends after work. Despite having admitted his own drug use, father denied having a problem with drugs and seemed upset when he learned mother had tested positive for methamphetamine. Father said he was going to leave mother because he did not want to be with a drug addict. He referred to mother as "esta loca" ("this crazy"). Father said he wanted custody of his newborn son, but the social worker told him his own drug use precluded him from having custody at that time.

On April 20, 2015, DCFS filed a section 300 petition on behalf of mother's three-year-old daughter, A.A., and Carlos. The juvenile court found that DCFS had made a prima facie case to detain both children, and found that petitioner was the presumed father of Carlos. A.A. was released to her father, where she remains.

Father agreed to a court-ordered case plan on June 1, 2015. The court ordered father to attend a drug treatment program and random drug testing, a 12-step program with a court card and sponsor, as well as individual counseling and parenting instruction. The court also ordered that the parents' visits with Carlos be monitored.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

When DCFS interviewed father in anticipation of the June 1, 2015 contested disposition hearing, father stated he was employed remodeling and painting apartment buildings in the Los Angeles area, although he was currently finishing a job in Santa Margarita. Father recanted his previous statements about his drug use, stating that he had used marijuana at age 15, but denied any current drug use.

DCFS reported that the parents visited with Carlos from 4:00 to 6:00 p.m. on Fridays at a McDonalds in Pico Rivera and from 4:00 to 6:00 p.m. on Saturdays at a Pico Rivera park. Although father had submitted to a drug test on May 7, 2015, with negative results, he had not enrolled in any court-ordered drug program. He had told the social worker that he did not do drugs and was "a busy person and does not have time to even drink beer." The social worker who conducted the interview reported that he had made appointments with the parents, but they "would fail to show." DCFS was "unaware if [father] has continued using substances during this period as father was not making himself available to test." DCFS opined that both parents had minimized their substance abuse problems and were not eager to begin their treatment programs.

On June 1, 2015, the juvenile court sustained an amended version of the section 300 petition.[2] Father pled no contest to the allegations of the amended petition. The parents' monitored visitation was to continue, at least two hours per week. The parents were to be referred for counseling at a DCFS-approved facility, to include individual counseling, parenting, alcohol counseling, random alcohol testing, drug counseling, and random drug testing once per week.

On August 17, 2015, DCFS submitted a progress report prepared by social worker Nereida Garcia for the two and one-half month period following the jurisdictional

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[2] The court amended count b-3 of the petition to read as follows: "The child Carlos['s] . . . father, Carlos [R.], . . . has a history of drug abuse and is a recent user of methamphetamine, which periodically renders the father incapable of providing regular care and supervision of the child. The child is of such a young age requiring constant care and supervision that the father's substance abuse interferes with the father's ability to provide regular care and supervision of the child. The father's drug use endangers the child's physical health and safety and places the child at risk of harm."

hearing. Ms. Garcia expressed "difficulties with communicating with the father" and had only one face-to-face meeting with him. Ms. Garcia submitted drug test reports of father's weekly drug testing. For the 10 weeks between May 8, 2015 and July 28, 2015, father had six negative tests and four "no shows." Father had visited Carlos six times (for three hours each Saturday) and had missed a total of nine visits. Carlos's foster mother reported that father continued to visit Carlos, but missed visits due to his work schedule. Father reported working in construction, with a schedule that changed daily depending on the jobs for a particular week.

A November 30, 2015 status report included Carlos's foster mother's comment that mother and father were not consistent in visiting Carlos. The foster mother reported that when either parent visited Carlos, they were late most of the time. Ms. Garcia also reported that she "struggles in contacting either parent due to phone numbers disconnected, being temporarily out of service or change of numbers." Father claimed to struggle to participate in any court-ordered programs because of his work schedule. Ms. Garcia explained that participating in court-ordered programs was crucial if he wanted to reunify with his child. Ms. Garcia communicated with father and Carlos's foster mother, and both agreed to change father's visits to Saturday evening to accommodate father's work schedule. As of the date of that report, father had visited Carlos once, on October 3, 2015. Father had failed to report for weekly drug testing on nine occasions between August 5, 2015 and October 15, 2015.

The six-month review hearing was scheduled for January 5, 2016. A week before the hearing, on December 28, 2015, father enrolled in a program called "A Better Me" at the Latino Family Alcohol and Drug Services Center. Father enrolled in "Group Education and Process" two evenings per week, parenting classes (the next available class), a 12-step support group (three times per week), and individual counseling (Tuesdays at 5:00 p.m.)

In a progress report prepared for the six-month review hearing on January 5, 2016, Ms. Garcia stated that mother was "approximately one or two months" pregnant, and both parents appeared to be motivated to "start their services and reunify with their son

Carlos." DCFS recommended continuing the parents' family reunification services. However, in a Last Minute Information for the court, DCFS changed its recommendation "due to parents lack of participation in court orders." Drug test reports for the month of December showed that father had tested negative for drugs three times and had one "no show."

At the six-month hearing on January 5, 2016, the court opined that the parents had "done nothing," except father had enrolled in a program the previous week. Father's counsel argued that DCFS had not made reasonable efforts to provide the necessary services. Counsel pointed to what he considered to be gaps in the "Delivered Service Log" (Title XX's). Counsel also pointed out that in December, father had "sought out the referrals" and was drug testing. Counsel argued that based on father having enrolled in a program and "testing clean," there was a reasonable likelihood he would reunify with Carlos.

After argument, the court stated that there was "ample evidence . . . , even in the Title XX's, that father has been involved with this case, has been in contact with the social worker, has been visiting with the child but has done nothing in terms of any participation in any programs and the Department tries to get a hold of father, father doesn't call back or calls back late. We don't need to give perfect services but they need to give reasonable efforts. There's no question in this court's mind that there's ample evidence before the court that father, Mr. [R.], has been given reasonable services." The court noted that "[we're] dealing with a child under the age of three. We're now eight, nine, ten months into this case. There is no likelihood that this child . . . could have the opportunity to reunite based on [the parents'] lack of participation in any of these programs." The court terminated reunification services for both parents and set the matter for a permanency planning hearing on May 3, 2016.[3]

Father filed a timely notice of intent to file writ petition on January 6, 2016.

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3 The hearing has been continued to November 1, 2016.

DISCUSSION

Section 361.5, subdivision (a)(1)(B), provides that "[f]or a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing . . . but no longer than 12 months from the date the child entered foster care . . . ."

"At the review hearing held six months after he initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, after considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (e)(1).) That section further provides: "The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." This section, as well as section 361.5, "provide the court with the option to terminate reunification efforts after six months where the parents have made little or no progress in their service plans and the prognosis for overcoming the problems leading to the child's dependency is bleak." (*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 612.) However, even if the court finds that the parent has not made substantive progress on his or her case plan, it must continue services to the 12-month hearing if there is a substantial probability that the child may be returned to his or her parent within the ensuing six months. (§ 366.21, subd. (e)(1); *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 176.)

In this case, father does not contest the finding that he failed to participate regularly and make substantive progress during the first six months of his service plan. However, father claims the court erred when it found there was not a substantial

probability that Carlos could be returned to him at the 12-month hearing, and when it found that reasonable services were provided to him.

In order to find there is a probability that Carlos could be returned to father's care safely maintained in father's home if services were extended, the court would have been required to find that (1) father had consistently and regularly contacted and visited Carlos, (2) father had made significant progress in resolving the problems that led to Carlos being removed from father's custody, and (3) father had demonstrated the capacity and ability both to complete the objectives of his treatment plan and to provide for Carlos's safety, protection, physical and emotional well-being, and special needs. (§ 366.21, subd. (g); see also Cal. Rules of Court, rule 5.710(c)(1)(D).)

Applying the above factors, we find substantial evidence supports the court's finding there was not a probability that Carlos could be returned to father's care even if services were extended for six months. First, the evidence before the court showed that father's visitation with Carlos during the six-month case period was not "regular and consistent." In August 2015, DCFS reported that father had attended six visits and missed nine visits. For the next review period, father visited Carlos only once. Father attributed his sporadic visitation to his work schedule, which he claimed changed daily. Carlos's foster mother complained that father often cancelled scheduled visits. Even after the social worker facilitated a change in father's visitation, to Saturday evening, father continued to miss scheduled visits.

Second, Carlos was detained at birth because both he and mother tested positive for methamphetamine and father admitted he had also used drugs. As evidence that he had made significant progress in resolving the problems that led to Carlos being removed from his custody, father points to his enrollment in the "A Better Me" program. However, father entered the program only a week prior to the six-month hearing. Although the letter from "A Better Me" set forth the programs father was scheduled to attend, father had not yet attended them prior to the hearing. Father's entry into the program was so recent that the court could not evaluate whether or not father was

diligently working on completing his court-ordered services. Further, father's drug testing was also sporadic and replete with "no show" reports.

Finally, father failed to demonstrate that he would be able to provide for Carlos's safety, protection, physical and emotional well-being if services were extended. (Carlos is healthy and does not have special needs.) Carlos was detained at birth. Father was given monitored visitation, and visitation was never liberalized. Father did not visit Carlos consistently and has never had a caretaking role in Carlos's life.

We further find there is sufficient evidence to support the court's finding that reasonable reunification services were provided to father. (See *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

The record demonstrates that the case worker, Ms. Garcia, assisted father with a referral for drug testing (and reminded him repeatedly of the importance of testing regularly), and also facilitated father's visitation with Carlos when father claimed his work schedule intervened. Father faults DCFS for his failure to enroll in other court-ordered programs such as the counseling, parenting and 12-step programs offered by A Better Me. He points to the fact that the Title XX's lack sufficient entries showing that the DCFS social worker, Ms. Garcia, "met with father (or even talked with him via phone) in a reasonable time period after the disposition hearing to review his caseplan and provide him with referrals he needed in order to enroll in his court-ordered services." Ms. Garcia did note in her periodic reports that she had considerable difficulty reaching father by phone, either because the number was not in service or father did not return her calls. We do not fault Ms. Garcia for failing to note each and every one of her efforts to reach father in the Title XX's log. The fact is that father knew of the case plan requirements from the time of the disposition hearing. It is evident from the record that his failure to enroll in certain court-ordered programs was not due to the failure of DCFS

to provide appropriate referrals, but was due to his busy and irregular work schedule. The services that DCFS did provide were reasonable under the circumstances.

DISPOSITION

The petition for extraordinary writ is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT